ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands	)	PR Docket No. 92-80 RM 7909
	)	
To: The Commission	)	

C O M M E N T S

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

THE CONSORTIUM OF CONCERNED WIRELESS CABLE OPERATORS

Robert J. Rini, Esq.
Stephen E. Coran, Esq.
Rini & Coran, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

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SUMMARY

In response to the Notice of Proposed Rule Making, PR Docket No. 92-80, FCC 92-173, released May 8, 1992 ("NPRM"), the Consortium of Concerned Wireless Cable Operators (the "Consortium") advocates: (1) retention of existing interference standards to ensure flexibility in wireless cable system design; (2) modification of processing procedures to expedite action on applications; (3) adoption of new rules to expand the protected service area to reflect actual coverage potential; and (4) simplification of application procedures for signal booster stations.

First, the current interference standards should be retained. Replacement of those standards with a strict separation formula or a short-spacing table, as proposed in the NPRM, would limit the ability of operators to add channels to existing wireless cable systems and would likely foreclose the development of new systems. Moreover, the separation formula would not serve the interests of spectrum efficiency and would disregard the incentives to collocate adjacent channels within the same system. Simply put, implementation of a strict separation standard or short-spacing table would place a devastating and unnecessary burden on the wireless cable industry.

Second, the Commission can expedite action on applications by less restrictive means than discarding the current interference standards. The Consortium proposes that MDS applications initially

be processed by the Private Radio Bureau ("PRB"), which also would create and maintain a consolidated MDS/ITFS database. Once the PRB reviewed applications for compliance with basic rules, the Mass Media Bureau ("MMB") would evaluate applications to determine acceptability and grant. The MMB would evaluate applications on a market-by-market basis to facilitate development of wireless cable systems. Because the MMB already processes ITFS applications and because Congress and the Commission have held that MDS is a medium of mass communication, the MMB is the logical processing and regulatory body for both MDS and ITFS proposals.

Third, the Consortium advocates a new means to calculate the distance to the boundaries of a station's protected service area according to its EIRP along each radial. This will ensure that the protected service area more accurately reflects the station's actual coverage area, and also will deter speculative applications and those filed only to obstruct wireless cable operations for greenmail purposes.

Finally, the Consortium urges that rules for authorization of signal boosters within the protected service area be simplified, and that signal boosters be permitted to be authorized in areas outside a station's protected service area on a secondary basis. Adoption of this latter proposal would expeditiously bring service to the public in areas where service would not otherwise be available.

The Commission can realize its objectives of reducing processing delays and fostering competition in the video

distribution marketplace by implementing the proposals described in these Comments. While minor modifications to existing rules are in order, the processing overhaul proposed by the Commission could very well sound the death knell for the nascent wireless cable industry before it ever has a chance to realize its true competitive potential.

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COMMENTS

The Consortium of Concerned Wireless Cable Operators (the "Consortium"),[1] by counsel and pursuant to Section 1.415 of the Commission's Rules, hereby jointly file these Comments in response to the Notice of Proposed Rule Making, PR Docket No. 92-80, FCC 92-173, released May 8, 1992 ("NPRM") respecting proposed rules intended to streamline the processing of applications for wireless cable authorizations and thus foster competition between wireless cable systems and cable systems.

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[1] The Consortium consists of wireless cable operators which currently operate or are developing wireless cable systems, as follows: ACS Enterprises, Inc. (Philadelphia, Pennsylvania); Broadcast Services International, Inc. (Ely, Minnesota; Port Huron, Michigan; and Caney, Kansas); People's Wireless Cable, Inc. (Lakeland, Florida); Family Entertainment Network Partnership (Fargo, North Dakota; Windom, Minnesota; and Yankton, South Dakota); Green Bay Entertainment Network Partnership (Green Bay, Wisconsin; Appleton, Wisconsin; and Sheboygan, Wisconsin); MultiMedia Development Corp. (Las Cruces, New Mexico; and Santa Fe, New Mexico); Red Rock Communications, Inc. (Rapid City, South Dakota); Skyline Entertainment Network (Spokane) L.P. (Spokane, Washington); and Wireless Entertainment Network Partnership (Grand Island, Nebraska; Kearney, Nebraska; and Lincoln, Nebraska).

I. INTRODUCTION

The Commission is to be commended for its continuing efforts to simplify the MDS[2] application process and in recognizing the competitive potential of wireless cable.[3] The amended rules stemming from the Commission's prior initiatives have contributed significantly to the establishment of new wireless cable systems and the further development of existing systems. For instance, the re-allocation of the H-channels from the Private Operational Fixed Service ("OFS"), which uses a strict 50-mile separation standard, to the Multipoint Distribution Service ("MDS"), which permits authorization of MDS stations within 50 miles based on a demonstration of interference-free operation, has enhanced the ability of wireless cable operators to consolidate channels which, in turn, furthers the ability of operators to compete with cable systems.[4] In addition, new rules making available for application unused Instructional Television Fixed Service ("ITFS") frequencies on a commercial basis to operators with a presence in a given market also has created new opportunities for operators to seek

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[2] As used herein, the term "MDS" means the Multichannel Multipoint Distribution Service channels designated as the E- and F- Groups and the Multipoint Distribution Service channels designated MDS-1, MDS-2, MDS-2A, H1, H2 and H3.

[3] See Report and Order, Gen. Docket Nos. 90-54 and 80-113, 5 FCC Rcd 6410 (1990); Second Report and Order, Gen. Docket Nos. 90-54 and 80-113, 6 FCC Rcd 6792 (1991) and Order on Reconsideration, Gen. Docket Nos. 90-54 and 80-113, 6 FCC Rcd 6764 (1991).

[4] See Part III, infra.

expansion of existing wireless cable systems.[5]

Notwithstanding these (and other) positive developments, wireless cable operators still must overcome several significant barriers that inhibit their ability to compete effectively with cable. First, acquisition of a sufficient number of channels in a market, by ownership or by lease, remains the most daunting task of wireless cable operators, a fact the Commission itself has recognized. See NPRM at ¶5. Second, unnecessary and burdensome regulations and processing delays have impeded the development and growth of wireless cable systems. Third, the wireless cable industry continues to be denied access to all available programming on fair and non-discriminatory terms. Fourth, and largely as a result of the above-mentioned obstacles, many developers and operators either have been unable to raise financing for system development or expansion, or have financed systems on such unfavorable terms that it is unlikely these systems will ever achieve their full competitive potential.

The wireless cable industry now faces what is perhaps the most critical point in its history. More and more new systems are under development, and more and more customers are subscribing to wireless cable service. Yet, in its zeal to assist the wireless cable industry and promote it as a legitimate competitor to cable, the Commission has proffered many new proposals that would have a

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[5] The new rules permitting applications for commercial use of vacant ITFS channels became effective January 2, 1992. As of the date hereof, none of the applications has been accepted for filing.

diametrically opposite effect. If adopted, many of the rule changes would jeopardize the very existence and future of the nascent wireless cable industry, long before its true competitive potential can be realized.

These Comments address the impact the proposed rules will have on developers and operators of wireless cable systems, and proffers less restrictive alternatives by which the Commission can accomplish its twin goals of reducing processing delays and encouraging competition.

II. APPLICATION PROCESSING AND MDS REGULATION

A. Proposed Processing and Regulatory Scheme

At present, two of the Commission's Bureaus process wireless cable applications. The Common Carrier Bureau ("CCB") processes MDS applications and regulates the use of MDS frequencies. The Mass Media Bureau ("MMB") processes ITFS applications and regulates the use of ITFS frequencies.

In the NPRM, the Commission has proffered four options to re-organize the MDS processing and regulatory scheme. See NPRM at ¶6. Of these alternative proposals, the Consortium submits that the Private Radio Bureau ("PRB") should be charged with initial application intake responsibilities for both MDS and ITFS, and that the MMB should perform the remaining processing tasks and regulate the wireless cable service.

Specifically, in this scenario, the PRB would develop and maintain a consolidated database of all MDS and ITFS applications,

construction permits, conditional licenses and licenses. After an application is filed, it would first be forwarded to the PRB's Licensing Division in Gettysburg, Pennsylvania where the PRB staff would update the database accordingly. Then, the PRB staff would undertake an initial determination to ensure that the application complies with fundamental acceptability criteria. This initial review would ascertain only whether: (1) the application is properly executed; and (2) all required pages and exhibits are included.[6]

Once this initial determination is completed, the PRB would list compliant MDS applications on a public notice as "accepted for tender", which would promptly notify the public that an application has been filed for a particular market, thereby stemming the tide of subsequent untimely-filed MDS applications for the same market. At this time, the PRB would forward the applications to the MMB for full legal and engineering review. Those MDS applications meeting the legal and technical rules would be "accepted for filing" and, if mutually exclusive, would be set for lottery. As under current rules, petitions to deny could only be filed post-lottery against the lottery winner. See Section 1.824. If there were no other mutually exclusive acceptable applications and no petitions to deny

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[6] A similar scheme has worked well in the Mobile Services Division which has been charged with processing numerous mutually-exclusive applications for the same market. Certain specified items are reviewed under a "letter-perfect" standard, and all applications satisfying the requirements are scheduled for lottery. See, e.g., Jacksonville Cellular Telephone Corporation, 3 FCC Rcd 5386 (1988). Pre-lottery amendments are not permitted to be filed. See Section 22.918.

were filed, the application would be grantable.[7]

As a third component of this plan to expedite processing, Section 21.902(c)(1)(i) and a portion of Section 21.902(c)(2) could be modified to eliminate the line-of-sight calculation, to be replaced by interference analyses of and service on all co-channel and adjacent-channel stations within 75, rather than 50 miles.[8] Commission engineers will no longer need to review or perform interference analyses based on the existence of an unobstructed electrical path. Instead, the absence of an unobstructed path can be presumed to all areas beyond a 75-mile radius.[9] This simplifies Commission engineering review to a one-step interference analysis and will reduce the time it takes to review engineering proposals, a goal the NPRM seeks to advance. See NPRM at ¶12.

B. Benefits of the Consortium's Proposal

There are several significant advantages to the above-proposed processing and regulatory plan. First, consolidation of MDS and ITFS processing in the same bureau will ease and facilitate

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[7] ITFS processing, which is not the subject of the NPRM, would not be affected by these changes.

[8] In order to expedite processing of pending applications, the Commission could require all tentative selectees to amend their applications with the revised interference analysis suggested herein. It would not be necessary or advisable, however, for "lottery loser" applications to be amended at such time. Subsequently-named tentative selectees could be required to amend their applications post-lottery within the time period set out in Section 21.23(a).

[9] This assumes a transmit antenna height of 2,250 feet above ground level and a receive antenna height of 30 feet above ground level.

development of wireless cable systems. Such "one-stop shopping" will allow systems to be developed on a market-by-market basis rather than under the current scattergun approach that often inhibits system development.[10] Under current constraints, an operator typically will start with a few channel groups and, over the course of several years, add channels or channel groups as the Commission randomly processes and grants applications. This piecemeal approach does not permit efficient construction of wireless cable systems, hinders an operator's ability to attract subscribers and limits the interest of capital investors who decry the lack of predictability in the timing of the processing of applications.[11]

Nor does the Commission's proposed processing scheme, as outlined in the NPRM at ¶¶22-25, benefit the wireless cable

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[10] In deciding which markets to process first, Commission staff should establish specific criteria for ruling on requests for expedited consideration by operators attempting to consolidate channels in a particular market. For instance, priority processing for modification applications and applications to add new channels to existing systems would receive prompt processing. This will allow wireless cable operators to more quickly commence service to the public with a cable look-alike service. The MMB currently employs a similar system in determining whether to grant a broadcast applicant expedited treatment. Once MDS processing returns to more predictable time schedules, the market-by-market processing approach advocated herein would be more readily administered because applicants would be expected to file for all available channels.

[11] As part of its implementation of the market-by-market processing scheme, the Commission should quickly resolve pending petitions to deny and petitions for reconsideration filed with respect to applications submitted during the 1983 filing window. System development is stalled in many markets, large and small, as applicants and operators await resolution of long-pending petitions.

industry. This modified "first-in, first-out" approach would merely perpetuate current processing delays and does not permit efficient development of wireless cable systems on a market-by-market basis.[12]

Second, consolidating the MDS and ITFS staff and processing applications on a market-by-market basis will conserve administrative time and resources. Commission staff will need only to review engineering proposals for a market once, thereby avoiding the duplicative efforts of both the CCB's Domestic Radio Branch for MDS and the MMB's Distribution Facilities Branch for ITFS. Combining staffs also will afford bureau management the flexibility to assign personnel to either MDS or ITFS applications as processing needs dictate.

Third, the MMB is the most logical bureau to regulate the wireless cable industry. In practice, wireless cable operates as

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[12] The Commission's alternative proposal to adopt MSA and RSA geographic distinctions at this time would have chaotic results. See NPRM at ¶¶26-28. To change to such a scheme after the filing of thousands of applications and after many systems have commenced operations would sharply curtail the number of markets capable of supporting wireless cable systems. Even more disturbing is the suggestion that tentative selectees in such markets undergo further processing because they have been arbitrarily and ex post facto rendered mutually exclusive after having engineered applications to protect nearby stations.

a mass media service. Both Congress and the Commission have recognized that MDS is "medium of mass communications." In Report and Order, 57 RR 2d 943, 948 (1985), the Commission stated that:

> it has become apparent that Congress labeled MDS a "media of mass communication" for purposes of the lottery statute in Section 309(I)(3)(c)(i) [of the Communications Act of 1934 as amended] because it felt that as presently constituted, MDS operators do have the ability to exercise editorial control over a substantial portion of the service.

Moreover, wireless cable has evolved to the point where now, few if any stations operate as common carriers. Consequently, there remains little justification to continue to regulate MDS as a vestigial common carrier service. Nor does wireless cable operate as a private carrier because use of the frequencies is for public, commercial use rather than for private, internal use. Thus, MDS should not be regulated as a private radio service. Rather, in an effort to consolidate MDS processing and regulation, the MMB is the most logical option because MDS, like the ITFS service MMB already regulates, is a mass media service. From a practical standpoint, MMB staff can rely on its experience and knowledge in processing ITFS applications to process MDS applications, which should ease the transition in relocating MDS processing.

In sum, the processing and regulation of MDS and ITFS applications can be significantly streamlined under the two-phase plan outlined above. Initially, all applications would be funnelled through the PRB for database entry and threshold determinations of tenderability. Then, the MMB will review

applications and make all acceptance determinations on a market-by-market basis. Prompt implementation of this plan would facilitate the efficient and economical development of wireless cable systems and further the ability of wireless cable to compete with cable and other video distribution technologies.

III. INTERFERENCE CRITERIA

A. Retention of the Non-Interference Standard

The NPRM proposes to replace the current application rules requiring the submission of interference analyses with strict co-channel and adjacent-channel separation criteria. Although this simple, formulistic approach may appeal to the Commission's desire to process applications quickly, it poses a significant threat to the continued viability of existing wireless cable systems and will effectively prohibit the establishment of wireless cable systems in other markets. As more fully described infra, the Commission can advance its dual goals of expediting application processing and promoting competition simply by making minor adjustments to existing rules governing interference concerns.

The current interference protection standards set out in Section 21.902(b) state that MDS applicants must provide at least 45 dB of co-channel interference protection and 0 dB of adjacent-channel interference protection to the protected service areas of existing or previously proposed stations, and Section 21.902(c) requires the inclusion of interference analyses demonstrating such protection. Pursuant to Section 21.902(c)(1)(ii), applicants must

analyze all existing or proposed co-channel stations within 50 miles, and pursuant to Sections 21.902(c)(1)(i) and 21.902(c)(2), applicants also must analyze stations to which the therein proposed station has an unobstructed electrical path (i.e., line of sight). The Commission also has held that "[i]f the adjacent channel transmitters [in the same market] are not collocated, the probability of out-of-band emissions causing harmful interference [to the adjacent channels] is much greater." First Report and Order, Gen. Docket No. 80-113, 98 FCC 2d 68, 118 (1984) ("MMDS Order"), quoted in Heritage Broadcasting Company of North Carolina, 61 RR 2d 1206, 1211 (Com. Car. Bur. 1986).

B. Benefits of the Non-Interference Standard

The interference protection standards of Section 21.902 and the incentives to collocate adjacent channel stations in the same market serve many useful purposes. First and foremost, as the Commission recognizes, interference protection standards allow for maximum flexibility in system design and system expansion. See NPRM at ¶2. For example, when seeking the addition of channels to the Las Cruces, New Mexico system prior to the recent re-allocation of the H-channels from the PRB to the CCB, the applicants for the channels sought waiver of the strict 50-mile separation limitation set out in Section 94.65(f) because the transmit site was 36.5 miles from licensed H-channel stations in El Paso, Texas. The Las Cruces applicants included agreements from the El Paso licensees accepting interference, and designed the system to use 10 Khz frequency offset to avoid interference. Notwithstanding these

efforts and the absence of unacceptable interference to the El Paso licensees, the Commission denied the waiver requests and the applications were not granted. See Order, DA 91-1347, released November 4, 1991. Subsequently, following the re-allocation of the H-channels to the CCB, the same applicants demonstrated non-interference pursuant to Section 21.902, and its applications were granted. This resulted in the addition of three channels to the existing Las Cruces wireless cable system, a result in the public interest.

A nearly identical situation arose with respect to the wireless cable system in Lakeland, Florida, where the transmit site lies less than 50 miles from wireless cable transmit sites in both Tampa, Florida and Orlando, Florida. Under Section 94.65(f), the PRB's strict 50-mile separation rule, applicants could not apply for the H-channels prior to the re-allocation. Once the H-channels became subject to the Part 21 interference protection standards, the H-channels became available for filing upon a demonstration of non-interference to the Tampa and Orlando H-channel stations. Recently, two of the H-channels were granted and promptly constructed as part of the Lakeland system.[13]

A return to this 50-mile separation criteria and its application to all MDS channels, as proposed in the NPRM, would

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[13] Of course, had H-channels for Lakeland been applied for before the H-channels in either Tampa or Orlando, the Lakeland applications would have pre-empted the filing of H-channels in both of the other markets, even if interference-free operation could have been demonstrated.

have a much more devastating and anti-competitive effect than that illustrated supra. Many markets where wireless cable systems are currently under development might never receive service because the separation criteria would prevent the filing of applications for any of the MDS channels. This result would prevent the establishment and development of potentially viable cable-competitive video distribution systems nationwide. Such an outcome flies squarely in the face of the Commission's oft-stated objectives.[14]

Moreover, operators in other communities would be unable to add channels to existing systems. The inability of an operator to secure the full complement of wireless cable channels would severely inhibit an operator's ability to compete with cable systems. In addition, the investment community would likely be less willing to invest in the wireless cable industry in circumstances where there would be, at best, uncertainty as to the number of channels that could be offered and, at worst, an insufficient number of available channels.

A second and related basis for retaining the current interference standards is spectrum efficiency. Flexible standards based on the predicted presence of harmful interference encourages

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[14] The Commission does not propose similar changes for ITFS applications, which presumably would continue to be processed under a 45 dB co-channel and 0 dB adjacent channel interference protection standard. See Section 74.903. Having two separate standards where only one exists now contravenes the Commission's efforts to streamline processing and is inconsistent with the MDS processing plan proposed herein. See Part II, supra.

the maximum use of the spectrum set aside for wireless cable. More of the spectrum would be utilized if systems could continue to be engineered on a non-interference basis rather than according to an arbitrary separation criteria that has no regard for the location of existing systems or areas where wireless cable could offer competitive service. As the Las Cruces and Lakeland examples illustrate, vacant channels would forever remain fallow if a separation criteria were adopted. Retention of interference standards serves the Commission's policies of ensuring interference protection and promoting spectrum efficiency. See NPRM at ¶13.

Third, the imposition of a separation standard would require a complete overhaul in the methods by which wireless cable applications and systems are designed by substituting fiction for fact. The NPRM proposes an 80 km co-channel separation limit and a 48 km adjacent-channel separation limit, premised on an antenna height-above-average-terrain ("HAAT") of 180 meters that assumes a "flat-earth" line-of-sight signal distance of 56 km. See NPRM at nn.20-24.[15] The inherent flaws underlying the assumptions in this proposition are the very predicates upon which they rest. Unlike FM signals that travel along the earth's surface, wireless cable frequencies propagate according to line of sight limitations, calculated from an antenna height above ground level ("AGL"). Hence, transmit sites are selected and systems are designed

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[15] The proposal to require applicants to certify as to the accuracy of these distances is discussed in Part IV of these Comments.

pursuant to actual antenna heights and actual terrain features that permit a prospective wireless cable operator to properly evaluate the actual subscriber base that could be served with a reliable, high-quality signal. These determinations often are made prior to the time an application (new or modification) is filed. The Commission's assumption that the height-above-average-terrain of an MDS transmitting antenna would be 180 meters misses the mark because systems are designed according to unique and market-specific technical characteristics.

Fourth, the Commission's proposed establishment of an 80 km separation for co-channel stations and a 48 km separation for adjacent-channel stations fails to account for the technical and operational need to collocate adjacent channel stations in the same market. See MMDS Order, supra, 98 FCC 2d at 118. The best way to ensure that adjacent channels within the same system do not interfere with each other is to collocate such stations. Collocation also conserves economic resources because only one transmit site for each system need be constructed and only one receive antenna for each subscriber is needed.

Fifth, in contrast to its intended effect, a separation standard would likely burden scarce administrative resources, not streamline processing. Applicants for frequencies that would add channels to existing systems could build a strong case for waiver of the rules if they could show that the channels are necessary to expand an existing system, that the station would not interfere with any others, and that the affected licensee has consented.

Consideration of waiver requests delays processing and, further, does not afford wireless cable operators or investors any degree of predictability concerning the future availability of channels.

C. The Unworkability of the Short-Spacing Table

For many of the same reasons, the Commission's alternative proposal to use a short-spacing table also in unworkable. See NPRM at ¶14. As the Commission notes, applications could not be processed expeditiously. Id. Further, any flexibility in system design gained from use of a short-spacing table can be more fully realized within existing rules, as proposed to be modified herein. The additional time applicants would need to change their proposals mid-stream, especially if applications were required to be amended pursuant to a short-spacing table, would further delay processing and add to the Commission's application backlog, with no countervailing benefits.

D. Protection of ITFS Stations

An equally troubling aspect of the Commission's proposal to adopt separation standards concerns the elaborate procedures intended to ensure protection of ITFS receive sites. See NPRM at n.29; Appendix B, proposed Section 21.902(c). According to the NPRM, MDS licensees would be required to contact nearby ITFS licensees at least 14 days prior to commencing operation, and would be subject to objections by ITFS licensees as late as 30 days after operation commenced. The Commission would be authorized to order the MDS station to immediately cease operating without the benefit of a hearing upon a mere allegation of interference by the ITFS

licensee. This proposal goes too far.

These unnecessary and burdensome procedures would have a detrimental effect on wireless cable development, with little or no benefit to ITFS eligibles whatsoever. Under current rules, MDS applicants are required to provide nearby ITFS licensees and permittees with copies of their interference analyses by certified mail, are required to provide evidence of such service to the Commission, and are subject to pre-authorization petitions to deny by ITFS licensees and permittees following a Commission determination that the application is acceptable for filing. See Sections 21.901(d)(1) and 21.30. ITFS licensees and permittees thus have ample opportunity to evaluate MDS technical proposals and file protests prior to the time significant funds are expended to finalize design and construction of a wireless cable system.

A post-operation protest period that could lead to a cessation in operations without a hearing will have a chilling effect on investment in and development of wireless cable systems. Investors and operators will be reluctant to spend funds on designing and constructing a wireless cable system if the station could be shut down after system launch, without regard to whether actual interference exists.

Moreover, there has been no demonstration that the current procedures are inadequate to ensure non-interference to ITFS stations. MDS applicants already are required to take special steps to serve ITFS licensees and permittees by certified mail and to provide evidence of service to the Commission. In addition,

wireless cable systems are required to be designed to provide interference protection to ITFS licenses. No rational basis exists to justify the establishment of a post-operation protest period for ITFS eligibles. It is entirely unnecessary and will have a significant negative impact on wireless cable development.

Retention of the interference protection standards for both MDS and ITFS coupled with the minor processing changes suggested herein will afford applicants and wireless cable operators the necessary flexibility in system design, will expedite application processing and service to the public, will spur investment in wireless cable development (and ITFS use) and, in turn, will promote competition among video distribution services. To scrap time-tested rules and reduce the application process to arbitrary separation standards could sound the death knell for the wireless cable industry. The Consortium respectfully urges that the FCC's draconian proposals be quashed, and that the alternatives proposed herein be adopted in order to promote flexibility in system design, efficiency in application processing, expanded use of ITFS frequencies by educators and competition to cable and other video delivery systems.

IV. APPLICATION REQUIREMENTS

The Commission also is considering replacing the certain elements of an MDS application with a simple certification. See NPRM at ¶16. Under current Part 21 rules, an MDS applicant must demonstrate that it is legally, financially and technically

qualified, that frequencies are available and that it has reasonable assurance of site availability.[16] As part of its plan to streamline application processing, the Commission proposes to eliminate these demonstrations in favor of a certification by the applicant.

While well-intentioned, implementation of the Commission's proposal would be counterproductive because it would encourage abuse and speculation. For instance, disreputable application preparation companies will likely prepare applications without having secured site assurance, and applicants will make no effort to ascertain construction and first-year operation costs. Moreover, certification as to technical requirements and frequency availability would be inconsistent with retaining non-interference standards, as discussed in Part III hereof. Current application requirements are necessary not only to ensure flexibility in system design, but also to deter speculative filings, which stand in the way of expediting processing and service to the public. See NPRM at n.32.

V. OWNERSHIP CHANGE AMENDMENTS

The Commission also is considering tightening the restrictions on an MDS applicant's ability to transfer ownership of a pending application. Presently, Sections 21.23(c)(6), 21.29 and 21.31(e)(3) permit amendments specifying a change in control where,

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[16] An applicant not subject to competing proposals must demonstrate it has a firm commitment for site availability.

inter alia, the change "is for legitimate business purposes other than the acquisition of applications." Section 21.23(c)(6). This class of exceptions is designed to permit ownership changes in applications without disturbing the integrity of the Commission's anti-trafficking rules and policies. In the NPRM, the Commission is considering permitting only pro forma ownership changes to pending applications.

Historically, the class of exceptions set out in Section 21.23(c)(6) has been applied in limited circumstances where the applicant: (1) desires to exit the wireless cable business and focus on other "core" assets;[17] (2) must transfer control as an incident to the sale of its parent company;[18] or (3) faces severe financial problems and the proposed new applicant is an experienced wireless cable operator.[19] The Commission also has not dismissed applications where the applicant, which is the operator of an existing wireless cable system, finds it necessary to add equity investors and issue stock in order to finance the ongoing operations of the system as a whole.[20] The Commission has approved

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[17] See Kansas City Southern Industries, Inc., 3 FCC Rcd 2842 (Dom. Fac. Div. 1988); Kansas City Southern Industries, Inc., 3 FCC Rcd 2851 (Dom. Fac. Div. 1988).

[18] See, e.g., amendment to application of Broadcast Data Corp. for Sheboygan, Wisconsin (File No. 2309-CM-P-83), filed July 12, 1991.

[19] See Microband Corporation of America, DA 92-635, released May 27, 1992.

[20] See Petition for Leave to Amend and Amendment filed April 6, 1992 by 5515, Inc. (File No. 59202-CM-P-91) with respect to its application for the E-Group channels at Lakeland, Florida.